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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TIMOTHY WILSON,

Defendant.

CRIMINAL COMPLAINT

Case No. 2:20-mj-234-BNW

**VIOLATIONS:**

**26 U.S.C. § 7202 – Willful Failure to Pay  
Over Trust Fund Taxes**

**26 U.S.C. § 7203 – Willful Failure to Pay  
Individual Income Tax**

BEFORE the United States Magistrate Judge, Las Vegas, Nevada, the undersigned  
complainant, being duly sworn, deposes and states:

**COUNT ONE**

**(Willful Failure to Pay Over Trust Fund Taxes)**

On or about April 30, 2013, in the State and Federal District of Nevada and elsewhere,

1 **TIMOTHY WILSON,**

2 defendant, a resident of Nevada, did willfully fail to pay over to the IRS all the trust fund taxes  
3 due and owing to the United States of America on behalf of the employees of Starsmiles  
4 Children's Dentistry, for the 1st Quarter of 2013, in the amount of \$12,945, all in violation of  
5 Title 26, United States Code, Section 7202.

6 **COUNT TWO**

7 **(Willful Failure to Pay Over Trust Fund Taxes)**

8 On or about July 31, 2013, in the State and Federal District of Nevada and elsewhere,

9 **TIMOTHY WILSON,**

10 defendant, a resident of Nevada, did willfully fail to pay over to the IRS all the trust fund taxes  
11 due and owing to the United States of America on behalf of the employees of Starsmiles  
12 Children's Dentistry, for the 2nd Quarter of 2013, in the amount of \$1,605, all in violation of  
13 Title 26, United States Code, Section 7202.

14 **COUNT THREE**

15 **(Willful Failure to Pay Individual Income Tax)**

16 During the calendar year 2013, in the State and Federal District of Nevada and  
17 elsewhere,

18 **TIMOTHY WILSON,**

19 defendant, a resident of Nevada, had and received gross individual income, on which there was  
20 due and owing to the United States of America an individual income tax, defendant was  
21 required by law to pay, on or before April 15, 2014, \$68,567 as income tax due to the IRS. Well  
22 knowing all of the foregoing, defendant willfully failed, on or about April 15, 2014, in the  
23 District of Nevada and elsewhere, to pay the income tax due on the gross income he received  
24 for 2013, all in violation of Title 26, United States Code, Section 7203.

1 POINTS AND AUTHORITIES

2 In consideration of the existing outbreak of the coronavirus disease 19 (COVID-19), as  
3 referenced in the Court's Temporary General Order 2020-03, the United States is aware of the  
4 outbreak's effect on the seating of a quorum of grand jurors, and the uncertainty of a quorum  
5 being seated within 30 days of any arrest or summons as the result of this Criminal Complaint  
6 pursuant to the Speedy Trial Act. As a result of the outbreak, a quorum was not available to  
7 hear the presentment of indictments on March 17 or 18, 2020. The United States has been and  
8 remains prepared to present the indictment on the instant charges to the grand jury at the  
9 earliest date a quorum can be convened. But because getting a quorum is uncertain at present,  
10 and because the statute of limitations is approaching on April 15, 2020, for the listed offenses,  
11 the United States proceeds now, in part, on this Criminal Complaint.

12 In light of the foregoing, the United States relies upon the applicable provisions of 18  
13 U.S.C. § 3161(b) and 26 U.S.C. § 6531(4) to toll or extend the six-year statute of limitations  
14 applicable to the tax crimes alleged herein under 26 U.S.C. §§ 7202 and 7203 in the event of a  
15 lack of a grand jury quorum to hear the presentment of the indictment as follows.

16 Pursuant to 18 U.S.C. § 3161(b), "If an individual has been charged with a felony in a  
17 district in which no grand jury has been in session during such thirty-day period, the period of  
18 time for filing of the indictment shall be extended an additional thirty days." The United States  
19 relies upon this tolling provision in the event an indictment cannot be presented to the grand  
20 jury within 30 days of arrest or summons. *See, e.g., United States v. Mann*, 701 F.3d 274, 284–85  
21 (8th Cir. 2012) (finding the plain language of section 3161(b) to be unambiguous in extending  
22 the period for filing the indictment where the grand jury was not in session).

23 Additionally, the Internal Revenue Code contains a mechanism for extending the statute  
24 of limitations period past 30 days for the tax crimes alleged herein. Specifically, 26 U.S.C.

1 § 6531 provides: “[w]here a complaint is instituted before a commissioner of the United States  
2 within the period above limited, the time shall be extended until the date which is 9 months  
3 after the date of the making of the complaint before the commissioner of the United States.”

4 This tolling provision was upheld in *Jaben v. United States*, 381 U.S. 214 (1965). The office of the  
5 United States Commissioner was abolished in 1968 by the Federal Magistrates Act, 28 U.S.C.  
6 §§ 631 *et seq.*, and the Magistrate Judges assumed the role of the United States Commissioner.

7 Section 6531 “was not meant to grant the Government greater time in which to make its  
8 case,” but rather “was intended to deal with the situation in which the Government has its case  
9 made within the normal limitation period but cannot obtain an indictment because of the grand  
10 jury schedule.” *Jaben*, 381 U.S. at 219-20; *cf. United States v. O’Neal*, 834 F.2d 862, 865 (9th Cir.  
11 1987) (investigation and case preparation need not cease upon filing of complaint; whether  
12 government improperly invoked extension is tested by sufficiency of the complaint at the  
13 preliminary hearing).

14 In recognition of the unusual circumstance the COVID-19 pandemic presents to the  
15 ability of the United States to secure an indictment next month, or even in the next several  
16 months, it relies upon the tolling provisions cited above by its timely filing of this Criminal  
17 Complaint.

#### 18 PROBABLE CAUSE AFFIDAVIT

19 I, Nakia McCloud, being duly sworn upon oath, do hereby depose and state the  
20 following:

21 1. I am a Special Agent with the Internal Revenue Service Criminal Investigation  
22 (hereinafter “IRS-CI”), Las Vegas Field Office and have been so employed since May 2011. I  
23 have experience conducting financial investigations surrounding violations of Internal Revenue  
24 Laws (Title 26, United States Code), the Bank Secrecy Act (Title 31, United States Code), the

1 Money Laundering Control Act (Title 18, United States Code, Sections 1956, 1957) and related  
2 offenses. I successfully completed an extensive six-month course of training including Criminal  
3 Investigator Training Program, Special Agent Basic Training, and Special Agent Investigative  
4 Training at the Federal Law Enforcement Training Center in Glynco, Georgia. The training  
5 classes covered the areas of criminal law, criminal investigative techniques, enforcement  
6 operations, and specialized training in financial investigations.

7 2. Prior to my employment with IRS-CI, I was employed as a Tax Compliance  
8 Officer with IRS Civil in Las Vegas, Nevada. I received my Bachelor of Science Degree in  
9 Business Administration with a major in Accounting in May 2004 from the University of  
10 Maryland University College.

11 3. Because this Affidavit is being submitted for the limited purpose of securing a  
12 Criminal Complaint, I have not included each and every fact known to me concerning this  
13 investigation. I have set forth only those facts that I believe are necessary to establish probable  
14 cause for the above listed offense. The information used to support this Complaint was derived  
15 from information obtained from witnesses to the offenses described herein as well as  
16 investigation conducted by law enforcement related to the incident. This Complaint contains  
17 information necessary to support probable cause to believe that the criminal offenses described  
18 herein were committed by the defendant, TIMOTHY WILSON, and is not intended to include  
19 each and every fact and matter observed by me or known to the United States. Moreover, to the  
20 extent this Complaint contains statements by witnesses, those statements are set forth only in  
21 part in substance and are intended to accurately convey the information, but not to be verbatim  
22 recitations. All times are approximate.

23 **FACTS ESTABLISHING PROBABLE CAUSE**

24 4. At all times material to this Complaint, WILSON, a dentist, was the sole owner

1 of Starsmiles Children's Dentistry ("Starsmiles") located in Las Vegas, Nevada. WILSON  
2 operated this business from about 2003 until 2014 when he closed the business.

3 5. As the owner of Starsmiles, WILSON caused trust fund taxes to be withheld  
4 from the wages paid to employees of his dental practice, Starsmiles, and reported those taxes on  
5 Forms 941, Employer's Quarterly Federal Tax Return, ("Forms 941") that were filed with the  
6 IRS.

7 6. Employers are required to withhold, truthfully account for, and pay over to the  
8 IRS a variety of taxes from employee wages, collectively referred to as "payroll taxes" or "trust  
9 fund taxes." They are called "trust fund taxes" because the employer is required to hold the  
10 taxes from employee wages "in trust" and pay them over to the IRS. These trust fund taxes  
11 include: federal income tax withholding ("withholding taxes") and Federal Insurance  
12 Contribution Act taxes ("FICA taxes"), as more particularly described below:

- 13 a. Withholding taxes: In general, an employer is required to deduct and  
14 withhold federal income tax on the amount of wages that are actually or  
15 constructively paid to its employees, and pay over those withholding taxes to  
16 the IRS; and
- 17 b. FICA taxes: The FICA tax is comprised of two elements: old-age, survivor  
18 and disability insurance, commonly referred to as "Social Security," and  
19 health insurance, commonly referred to as "Medicare." Social Security taxes  
20 are used to fund retirement and disability benefits, while Medicare taxes are  
21 used to provide health and medical benefits for the aged and disabled. An  
22 employer is required to deduct and withhold FICA taxes on the amount of  
23 wages that are actually or constructively paid to its employees, and pay over  
24 those FICA taxes to the IRS.

1           7.     Employers use a Form 941, to report to the IRS the wages, tips, and other  
2 compensation paid to employees, the total amount of federal income tax withheld, the total  
3 amount of Social Security and Medicare taxes withheld, and the total tax deposits.

4           8.     A person is responsible for collecting, accounting for, and paying over trust fund  
5 taxes if he or she has the authority required to exercise significant control over the employer's  
6 financial affairs, regardless of whether the individual exercised such control in fact.

7           9.     As the sole owner of Starsmiles and a person who exercised significant control  
8 over Starsmiles' financial affairs, WILSON was a person required to collect, account for, and  
9 pay over trust fund taxes to the IRS on behalf of Starsmiles.

10          10.    In 2015, IRS-CI identified WILSON as a subject of an investigation because he  
11 had failed to pay over trust fund taxes due to the IRS for 1st Quarter and 2nd Quarter of 2013  
12 and failed to pay his personal income tax for 2013.

13          11.    According to bank records, business records, witness statements, and IRS  
14 records, WILSON did cause the trust fund taxes to be withheld from the employee's wages;  
15 however, in the first two quarters of 2013, he failed to pay those withheld taxes to the IRS.  
16 Instead, WILSON spent the funds on personal expenditures.

17          12.    In 2007, Starsmiles engaged The Payroll Company ("TPC") to provide  
18 tax preparation services, including paying federal tax deposits to the IRS. Starsmiles was  
19 responsible for submitting employee payroll hours to TPC on a bi-weekly basis.

20          13.    Starting in 2011, TPC no longer made payments to the IRS on behalf of  
21 Starsmiles. TPC continued to generate the Forms 941, but did not file the form with the IRS.

22          14.    In 2010, WILSON hired Certified Public Accountant Julie Clifford ("Clifford")  
23 as his tax preparer in 2010. Clifford prepared WILSON's 2013 Form 1040, Individual Federal  
24 Income Tax Return ("Form 1040").

1           15.     On September 17, 2013, WILSON and Clifford met with Revenue Officer Ernie  
2 Capone about unpaid employment taxes for 2013. Capone discussed with WILSON his failure  
3 to timely file federal tax deposits for the amounts of wages paid and withheld from Starsmiles  
4 employees. WILSON signed a report of interview Form 4180 attesting that he had knowledge  
5 of unpaid trust fund taxes and indicated that he was the responsible party.

6           16.     Based on the meeting, Clifford tried to get WILSON on a payment plan which  
7 would have made WILSON and Starsmiles compliant within five years, but WILSON did not  
8 follow the suggested changes.

9           17.     WILSON was required to file his 2013 Form 1040, on or before April 15, 2014.  
10 WILSON filed his return indicating an income of \$257,784 and a tax due of \$69,199. He did  
11 not submit payment at that time or any time subsequent.

12           18.     A query of the IRS database revealed WILSON failed to pay over to the IRS all  
13 of the trust fund taxes due and owing, despite withholding the trust fund taxes from the wages  
14 of Starsmiles employees for the 1st Quarter of 2013 in the amount of \$12,945.

15           19.     A query of the IRS database revealed WILSON failed to pay over to the IRS all  
16 of the trust fund taxes due and owing despite withholding the trust fund taxes from the wages of  
17 Starsmiles employees for the 2nd Quarter of 2013 in the amount of \$1,605.

18           20.     A query of the IRS database revealed WILSON also failed to pay over to the IRS  
19 all of the income taxes due and owing on wages earned in 2013 in the amount of \$68,567.

20           21.     Based on my training and experience, and the facts as set forth in this affidavit,  
21 there is probable cause to believe that TIMOTHY WILSON violated Title 26, United States  
22 Code, Section 7202 (Willful Failure to Pay Over Trust Fund Taxes Due) for 1st and 2nd  
23 Quarters of 2013, and Title 26, United States Code, Section 7203 (Willful Failure to Pay  
24 Income Tax) for personal income taxes for 2013, in the District of Nevada.



1 I swear, under penalty of perjury, that the foregoing is true and correct.

2  
3 Respectfully submitted,

*Nakia McCloud*

4  
5 Nakia McCloud  
6 Special Agent  
Internal Revenue Service  
Criminal Investigation

7 Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by  
8 telephone on this 27th day of March, 2020.

9  
10    
11 HONORABLE BRENDA WEKSLER  
UNITED STATES MAGISTRATE JUDGE